



March 18, 2008

The Honorable John D. Dingell, Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for giving me the opportunity to testify before the House Energy and Commerce Subcommittee on Environment and Hazardous Materials on October 4, 2007. I appreciate the time and effort the Committee has devoted to understanding the small business perspective on regulatory relief.

Enclosed, please find my responses to the follow-up questions submitted by Representatives Barton and Shimkus, which were sent to me on February 26, 2008. In addition, I am submitting these documents electronically, as you requested. Please do not hesitate to contact me, or Kevin Bromberg of my staff at (202) 205-6964 or kevin.bromberg@sba.gov, if you have any questions.

Sincerely,

Thomas M. Sullivan
Chief Counsel for Advocacy

Enclosures

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

**House Energy and Commerce
Subcommittee on Environment and Hazardous Materials
Hearing on “Environmental Justice and the Toxics Release Inventory
Reporting Program: Communities Have a Right to Know”**

**Follow-up Questions from
The Honorable Joe Barton and the Honorable John Shimkus
March 18, 2008**

- 1. In your testimony, you described how EPA’s December 2006 TRI rule will help small businesses and strengthen environmental protections. Please describe why you believe that this new rule improves EPA’s ability to protect the environment.**

In addition to assisting small businesses via reduced recordkeeping/reporting requirements, EPA’s TRI reporting burden reduction rule also provides TRI reporters with incentives to protect the environment. In order to qualify for the benefits associated with the short Form A, many facilities will need to reduce their emissions into the environment and perform more pollution prevention.

By limiting persistent, bioaccumulative and toxic chemicals (PBT) Form A eligibility to facilities with zero releases and 500 pounds or less (Annual Reportable Amount, or ARA)¹ of other waste management (i.e., recycling, energy recovery, and treatment for destruction), EPA is encouraging facilities to eliminate releases of PBT chemicals and reduce other waste management quantities to 500 pounds or less. Facilities that currently dispose of wastes, such as mercury, would be encouraged to recycle the mercury instead to achieve zero emissions into the environment. This new provision is especially important to the environment because it drives those releases of chemicals of “special concern” (PBTs) to zero.

For non-PBTs, EPA has designed the Form A eligibility criteria in such a way as to create an incentive for facilities to move away from disposal and other releases toward treatment and recycling. This incentive is created by raising the recycling, treatment, and energy recovery portions of the ARA to a 5,000-pound maximum, while capping releases at 2,000 pounds. This approach promotes pollution prevention, recycling, energy recovery, and treatment over releases. In addition, by including all waste management activities in the Form A eligibility criteria, EPA will be newly encouraging facilities above the 5,00-pound ARA to reduce their total waste management in order to qualify for Form A eligibility.

¹ The annual reportable amount (ARA) is defined in the final rule as the sum of the quantities reported in sections 8.1 to 8.8 of the Form R, which reflect chemical disposal or other releases (8.1), energy recovery (8.2 and 8.3), recycling activity (8.4 and 8.5), treatment (8.6 and 8.7), and quantities associated with one-time events (8.8). In the pre-2006 version of the ARA, the ARA was defined as the sum of sections 8.1-8.7. The addition of 8.8 represented wastes generated from one-time events.

Through expanded Form A eligibility, EPA's burden reduction rule provides a major incentive for firms to bolster their reputations as environmentally responsible companies.

2. Please explain why small businesses with fewer than 10 employees are exempt from TRI reporting and why small businesses still need the additional burden reductions from EPA's December 2006 TRI ruling.

Congress originally set the employee and chemical throughput thresholds, based on data from New Jersey's right-to-know program, in order to capture the substantial majority of releases from industrial facilities. The original 10-employee statutory exemption was not established as a small business standard, but as a practical method of excluding facilities that were unlikely to pose a significant risk to the community. Now that EPA has nearly twenty years of TRI data, we know that additional burden reductions can be achieved without posing a significant risk to the community.

3. In your testimony, you mention that the Office of Advocacy contracted with a research firm to evaluate the impact EPA's December 2006 TRI rule will have on small businesses and local communities. Please explain what the research showed in terms of how EPA's rule will affect the public's access to information about toxic chemicals in their communities.

To evaluate claims of EPA rule impacts, Advocacy requested that E.H. Pechan & Associates, Inc. (Pechan) review information describing how TRI data are currently used, and to evaluate the impact of EPA's proposed reporting burden relief on these current uses.² Pechan's review focused on comments submitted to EPA in opposition to the proposed reporting revisions.

Pechan analyzed 17 national, state, and local TRI data use examples, and determined that, with the possible exception of one example, EPA's proposal will have insignificant effects on these data uses.³ Pechan found several instances where the commenters either misunderstood or misreported the nature of the proposed TRI revisions, and several cases where they misreported the underlying facts. For example, commenters failed to understand that no changes were proposed for PBTs, such as mercury, when the facility

² E.H. Pechan & Associates, Inc., "Review and Analysis of the Effect of EPA's Toxics Release Inventory (TRI) Phase II Burden Reduction Proposal on TRI Data Uses," prepared for U.S. Small Business Administration, Office of Advocacy, June 2007. See <http://www.sba.gov/advo/research/chron.html> for research summary and report. The research summary is also appended to this document.

³ In the case of the Louisville, Kentucky, area analysis, the effect of the proposal was to remove 2 of 19 chemicals from the chemical screening process, but the screening analysis relied on a conservative approach, and these low-risk chemicals accounted for a small portion of the overall risk in the area. It is unclear whether these two chemicals warranted attention, and therefore the true effect of the proposal on this use could not be determined without more analysis. However, under the final rule, the impact would be less, given the changes between the proposal and the final rule.

has any releases into the environment. Therefore, data users who were concerned about PBT releases going unreported were addressing a nonexistent issue. Additional examples of types of data uses where no impact is anticipated include uses to support chemical emergency planning and to support characterization of dioxin quantities (dioxins are exempt from EPA's proposal). In addition, many of the examples involve the use of TRI data to target facilities with the highest releases and/or total waste quantities for reductions. These uses are minimally (if at all) affected by EPA's proposal because the proposal limited Form A eligibility to small quantity waste reporters. As noted below, Form A eligibility changes implemented in the final rule and actual Form A utilization rates will only serve to strengthen the conclusions in the study.

Pechan's study identified various reasons for the large disconnect between public dissatisfaction with the TRI reform proposals, and the lack of significant impact found in the study. Two common explanations were: (1) ignorance about the specifics of the reporting revisions; and (2) ignorance about how TRI data are actually used. With respect to the first conclusion, many commenters appeared to be unaware that Form A does not represent a complete loss of Form R quantitative chemical information (a more apt characterization is that Form A creates an incentive for facilities to reduce their chemical use/releases by allowing small quantity handling facilities to use range reporting). Concerning the second reason, commenters often appeared to be unaware that data users understandably focus on large quantity emitters and PBT emitters that are not Form A eligible under EPA's December 2006 rule.

To illustrate assertions made by states and local communities opposing EPA's proposed reporting burden relief rule, Attachment A describes Pechan's evaluation of one claimed TRI data use impact example described by a State of Washington official. This example reflects the use of the TRI to enroll companies in Washington's pollution prevention (P2) program. A Washington official claimed that EPA's proposed TRI reporting changes would require 15 percent of the facilities to drop out of their P2 program. The Pechan study concluded that there was nothing in EPCRA or EPA's proposed regulation that would prevent the state from requiring Form A reporters to develop P2 plans. In fact, a different Washington official stated that the state had chosen to exclude Form A reporters from P2 planning requirements based on degree of risk.

Pechan determined that the State of Washington only requires that facilities' P2 plans cover 95 percent of their total hazardous products used and/or hazardous wastes generated. Pechan estimated that EPA's *proposed* rule would have reduced total Form R reported waste quantity for Washington by 0.31 percent and total release quantity by 0.64 percent. The analyses indicated that current and potential future Form A reporting involves quantities that are significantly less than the state's 5 percent hazardous waste quantity P2 plan exemption.

Implications of TRI Reporting Changes Adopted in Final Rule

It should be noted that the above study was performed for EPA's *proposed* rule. EPA's *final* rule differs significantly from the proposed rule in two ways: (1) the non-PBT annual reportable amount (ARA) has been revised to include section 8.8 (one-time event) quantities, and (2) non-PBT Form A eligibility has been narrowed by adding a 2,000-pound limit on releases of non-PBT chemicals that are considered for Form A. Assuming full use of Form A, EPA notes that the second change preserves almost 60 percent of the total release pounds that would no longer have been reported on Form R under the proposed rule.⁴ This fact, coupled with the addition of Section 8.8 quantities in the ARA, will serve to further reduce the nominal impacts described in the Pechan study.

Zip Code Analysis

One of the most oft-cited EPA estimates of impact from the proposed rule is that over 650 zip codes would lose all Form R information (i.e., approximately 7 percent of all zip codes with Form R data). Advocacy requested that Pechan evaluate the significance of EPA's zip code finding with respect to the local community right-to-know. As described below, Pechan determined that these zip codes account for only 0.01 percent of nationwide releases, and the median release for the "all Form A eligible" zip codes is 2 pounds, while the median release for all other zip codes is 6,800 times higher (13,600 pounds).

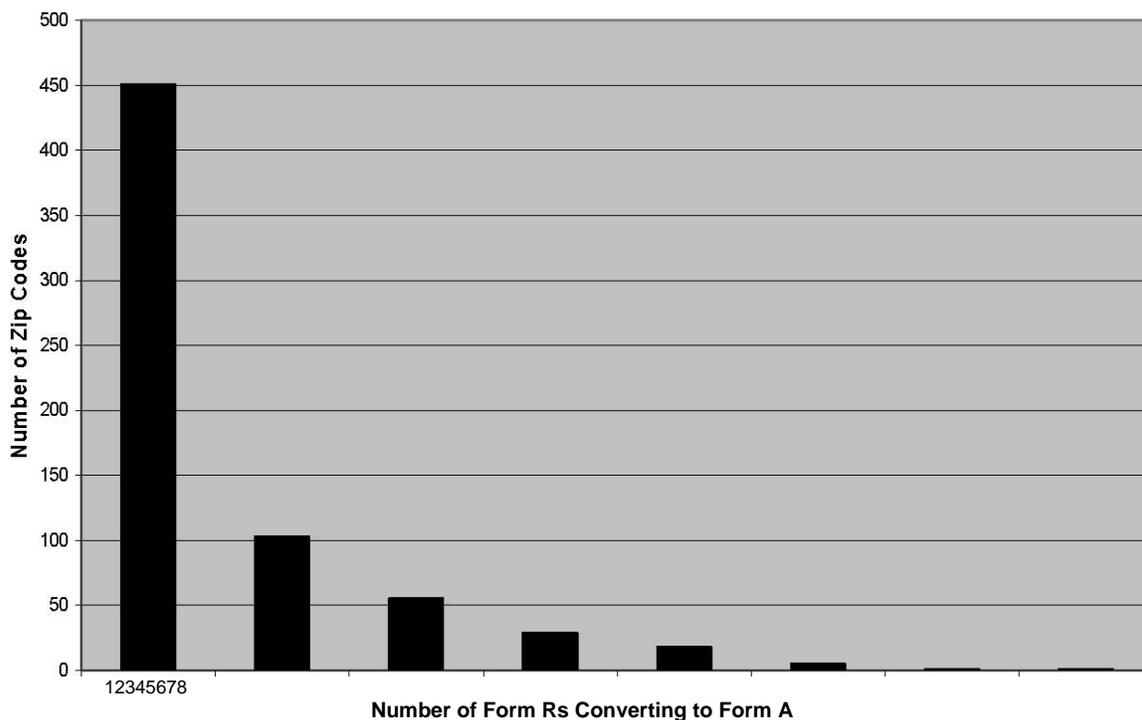
Using 2002 TRI data, Pechan identified 663 additional zip codes for which all current Form Rs will become Form A eligible at the 5,000 pound ARA threshold.⁵ The results are displayed in Figure 1 below. Pechan estimates that 554 of these zip codes have one or two Form Rs. Therefore, the large number of zip codes that can convert entirely to Form A is a function of the fact that a large number of zip codes have one or two reports.

It should be noted that the Figure 1 values reflect EPA's *proposed* rule. As noted above, EPA's *final* rule differs significantly from the proposed rule in such a way that will further reduce the impacts identified in Figure 1.

⁴ U.S. Environmental Protection Agency, "Response to Comments, Toxics Release Inventory Phase 2 Burden Reduction Rule," Office of Information Analysis and Access, Office of Environmental Information, December 18, 2006.

⁵ E.H. Pechan & Associates, Inc., "Additional Analysis of TRI Phase II Proposal, Technical Memorandum," prepared for U.S. Small Business Administration, Office of Advocacy, January 12, 2006. http://www.sba.gov/advo/laws/comments/epa06_0113.pdf.

Figure 1. Number of Zip Codes Where All Form Rs Become Form A Eligible



Pechan conducted an additional analysis of EPA’s *proposed* rule that utilized reporting year (RY) 2004 TRI data.⁶ This analysis compared release information for zip codes for which all Form Rs become Form A eligible with release information for other zip codes. Table 1 illustrates the very different release characteristics of the zip codes that would have all Form Rs become Form A eligible under EPA’s proposed rule. Although more than 5 percent of RY 2004 zip codes would have all Form Rs become Form A eligible under EPA’s proposed rule, these zip codes cumulatively accounted for 0.01 percent of total releases. The median release for the “all Form A eligible” zip codes is 2 pounds, while the median release for all other zip codes is 6,800 times higher (13,600 pounds). In other words, for 50 percent of the hundreds of zip codes with only Form A eligible facilities, Form R required reporting would account for 2 pounds or less in annual emissions to the environment. This reconfirms the point that a Form A is a mark of superior environmental stewardship, and not a cause for concern about missing data.

⁶ Pechan data analysis (March 2007) using RY 2004 TRI data.

Table 1. Comparison Between Zip Codes where All Form Rs Become Eligible For Form A with Zip Codes where One or More Form Rs Are Not Form A Eligible: Reporting Year 2004

Item	All Form Rs Eligible	All/Some Form Rs Not Eligible	Total (All Form Rs)	All Form Rs Eligible as % of Total
Number of Zip Codes	569	10,122	10,691	5.32%
Total Releases	278,067	4,333,771,149	4,334,049,216	0.01%
Mean Releases/Zip Code	489	428,196	405,430	0.12%
Median Releases/Zip Code	2	13,600	10,922	0.02%
Maximum Releases/Zip Code	5,627	458,177,056	458,177,056	0.00%

4. There has been a lot of criticism that the switch to Form A will affect the right to know at a local level. Can you comment on what the research you commissioned found and if information availability will be curtailed?

First, there is no effect on facilities that release PBTs to the environment – these facilities do not qualify for the Form A. Second, every community receives annual information about every chemical. Third, with regard to the other less toxic chemicals (non-PBT), 99 percent of the information is still preserved on the Form R. With regard to the other 1 percent, communities have the range reporting information for the same chemical that was reportable on the Form R. In cases where Form R data was used by a community, it would be difficult to find a situation where a Form A range report would hurt the analysis, because the problems addressed by communities involve releases of non-PBT chemicals well beyond 2000 pounds. Finally, the response to question 3 provides additional details about the specific research findings by our contractor, E.H. Pechan & Associates, which demonstrate no significant impact on the local right-to-know.

In addition, in January 2005, the Office of Advocacy filed comments that included an analysis of RY 2000 TRI data to determine whether there was a significant risk change at the local level by substituting a Form A for a Form R. Our contractor, E. H. Pechan & Associates, reviewed the RSEI (risk-based) scores for both the 2,000-pound and 5,000-pound thresholds.⁷ Under either the 2,000-pound or 5,000-pound threshold scenario, for 99 percent of all of the nation’s 3,142 counties the changes in reported risk were not significant. Thus, at the local level, EPA’s revised final rule (a release-based threshold

⁷E.H. Pechan & Associates, Inc., “*Risk-Based Analysis of Form A and Form NS Toxics Release Inventory Reform Proposal Alternatives, Final Report*,” prepared for U.S. Small Business Administration, Office of Advocacy, October 2004.

of 2,000 pounds) also involves very little change in the potential risk associated with releases that are being reported on Form R.

5. Mr. Sullivan, in your statement you suggest that the new EPA rules permitting certain firms to use Form A would actually provide an incentive for them to minimize their use of toxic chemicals. Could you please explain how this would work? Specifically, how would the new rules help small businesses?

Many thousands of small businesses will benefit from the December 2006 TRI reform. We estimate that about half of the new relief goes to small businesses.

The 2005 Advocacy-funded study by W. Mark Crain, *The Impact of Regulatory Costs on Small Firms*, found that small businesses are disproportionately affected by the total Federal regulatory burden.⁸ This overall regulatory burden was estimated by Crain to exceed \$1.1 trillion in 2004.⁹ For firms employing fewer than 20 employees, the annual regulatory burden was estimated to be \$7,647 per employee – nearly 45 percent greater than the \$5,282 burden estimated for firms with 500 or more employees.¹⁰ Looking specifically at compliance with federal environmental rules, the difference between small and large firms is even more dramatic. Small firms generally have to spend 4½ times more per employee for environmental compliance than large businesses do.¹¹ Environmental requirements, including TRI paperwork requirements, can constitute up to 72% of small manufacturers' total regulatory costs.¹²

Through expanded Form A eligibility, EPA's burden reduction rule provides a major incentive for firms to bolster their reputations as environmentally responsible companies. In addition to assisting small businesses via reduced recordkeeping/reporting requirements, EPA's TRI reporting burden reduction rule also provides TRI reporters with incentives to protect the environment. In order to qualify for the benefits associated with the short Form A, many facilities will need to reduce their emissions into the environment and perform more pollution prevention.

By limiting persistent, bioaccumulative and toxic chemicals (PBT) Form A eligibility to facilities with zero releases and 500 pounds or less (Annual Reportable Amount, or ARA)¹³ of other waste management (i.e., recycling, energy recovery, and treatment for

⁸ W. Mark Crain, *The Impact of Regulatory Costs on Small Firms* (September 2005) available at <http://www.sba.gov/advo/research/rs264tot.pdf>.

⁹ *Id.* at p. v.

¹⁰ *Id.* at page 55, Table 18.

¹¹ *Id.*

¹² *Id.*

¹³ The annual reportable amount (ARA) is defined in the final rule as the sum of the quantities reported in sections 8.1 to 8.8 of the Form R, which reflect chemical disposal or other releases (8.1), energy recovery (8.2 and 8.3), recycling activity (8.4 and 8.5), treatment (8.6 and 8.7), and quantities associated with one-

destruction), EPA is encouraging facilities to eliminate releases of PBT chemicals and reduce other waste management quantities to 500 pounds or less. Facilities that currently dispose of wastes, such as mercury, would be encouraged to recycle the mercury instead to achieve zero emissions into the environment. This new provision is especially important to the environment because it drives those releases of chemicals of “special concern” (PBTs) to zero.

For non-PBTs, EPA has designed the Form A eligibility criteria in such a way as to create an incentive for facilities to move away from disposal and other releases toward treatment and recycling. This incentive is created by raising the recycling, treatment, and energy recovery portions of the ARA to a 5,000-pound maximum, while capping releases at 2,000 pounds. This approach promotes pollution prevention, recycling, energy recovery, and treatment over releases. In addition, by including all waste management activities in the Form A eligibility criteria, EPA will be newly encouraging facilities above the 5,00-pound ARA to reduce their total waste management in order to qualify for Form A eligibility.

Therefore, the Federal government is properly concerned with environmental regulatory costs on small firms, and particularly those that fall on the manufacturing sector. Small businesses need regulatory relief and this TRI rule is a small but significant step in that direction.

6. In your testimony you mention the “substantial paperwork burdens” H.R. 1055 would impose on small business. Yet, to some, 10-15 hours may not sound like too much to ask if it means providing local communities with critical information on chemical releases. How would you respond to this view?

Small businesses have consistently voiced their concerns to Advocacy that the TRI program imposes substantial paperwork burdens with little corresponding environmental benefit, especially for thousands of businesses that have zero discharges or emissions to the environment. These businesses must devote scarce time and resources to completing lengthy, complex Form R reports each year, despite the fact that they have zero discharges. The Office of Advocacy believes the EPA rule strikes an appropriate balance by allowing meaningful burden relief while at the same time continuing to provide valuable information to the public.

In 2005, the Office of Advocacy released a study by W. Mark Crain, *The Impact of Regulatory Costs on Small Firms*, which found that small businesses are disproportionately affected by the total Federal regulatory burden.¹⁴ This overall regulatory burden was estimated by Crain to exceed \$1.1 trillion in 2004.¹⁵ For firms

time events (8.8). In the pre-2006 version of the ARA, the ARA was defined as the sum of sections 8.1-8.7. The addition of 8.8 represented wastes generated from one-time events.

¹⁴ W. Mark Crain, *The Impact of Regulatory Costs on Small Firms* (September 2005) available at <http://www.sba.gov/advo/research/rs264tot.pdf>.

¹⁵ *Id.* at p. v.

employing fewer than 20 employees, the annual regulatory burden was estimated to be \$7,647 per employee – nearly 45 percent greater than the \$5,282 burden estimated for firms with 500 or more employees.¹⁶ Looking specifically at compliance with federal environmental rules, the difference between small and large firms is even more dramatic. Small firms generally have to spend 4½ times more per employee for environmental compliance than large businesses do.¹⁷ Environmental requirements, including TRI paperwork requirements, can constitute up to 72% of small manufacturers’ total regulatory costs.¹⁸

In 2007, Advocacy requested that E.H. Pechan & Associates, Inc. (Pechan) review information describing how TRI data are currently used, and to evaluate the impact of EPA’s proposed reporting burden relief on these current uses.¹⁹ Pechan reviewed over 2,000 comments submitted to EPA in opposition to the proposed reporting revisions and identified 17 specific uses of TRI data for examination, addressing national, state and local concerns. Based on this analysis, Pechan’s June 2007 report found that EPA’s final rule will not have significant impacts on data uses identified by the commenters.

Previously, in January 2005, the Office of Advocacy filed comments that included an analysis of RY 2000 TRI data to determine whether there was a significant risk change at the local level by substituting a Form A for a Form R. Our contractor, E. H. Pechan & Associates, reviewed the RSEI (risk-based) scores for both the 2,000-pound and 5,000-pound thresholds (Pechan, 2004). Under either the 2,000-pound or 5,000-pound threshold scenario, for 99 percent of all of the nation’s 3,142 counties the changes in reported risk were not significant. Thus, at the local level, EPA’s revised final rule (a release-based threshold of 2,000 pounds) also involves very little change in the potential risk associated with releases that are being reported on Form R.

EPA’s TRI Burden Reduction rule will yield needed reductions in small business paperwork burdens, while preserving the integrity of the TRI program and strengthening protection of the environment. H.R. 1055 would essentially revoke the December 2006 rule of the U.S. Environmental Protection Agency (EPA).

¹⁶ *Id.* at page 55, Table 18.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ E.H. Pechan & Associates, Inc., “Review and Analysis of the Effect of EPA’s Toxics Release Inventory (TRI) Phase II Burden Reduction Proposal on TRI Data Uses,” prepared for U.S. Small Business Administration, Office of Advocacy, June 2007. See <http://www.sba.gov/advo/research/chron.html> for research summary and report. The research summary is also appended to this document.

7. Opponents cite the fact that a large number of zip codes could lose all or most of the detailed information contained in Form R. Do you believe this to be the case? Why would this not be a problem for local communities?

While there has been concern expressed over EPA's estimate of the large number of zip codes for which Form R information will no longer be required, this does not take into account that the number of Form A-eligible facilities is a direct reflection of their exemplary environmental performance – their status as zero/micro quantity releasers. The data indicates that a large number of manufacturing facilities have now achieved zero or very low releases, and, therefore, qualify for the new Form A. These facilities should be rewarded for their environmental performance via reduced reporting costs. As discussed in detail in the response to question 3, Pechan's review of the Form R data that would no longer be reported indicates that this information is of negligible value, especially when compared to the value of the information that EPA will continue to obtain through the required Form R reporting.

Based on the 2002 TRI, E.H. Pechan & Associates identified 663 zip codes for which all current Form Rs will become Form A eligible at the 5,000 pound ARA threshold. It is important to note that these estimates will overstate the actual impacts because many facilities will continue to use Form R regardless of a change in Form A eligibility. Moreover, the great majority of these zip codes involve reporting for only one or two Form Rs, and by definition, all of these involve very small quantities. The Office of Advocacy found that 554 of the total 663 zip codes have only one or two Form Rs in the 2002 TRI. Thus, the large number of zip codes that can convert entirely to Form A is a truly a function of the fact that more than 550 zip codes have only one or two reports.

8. How would you answer the criticism that the burden relief under the new EPA rules is meant to primarily help large businesses?

The Office of Advocacy believes that approximately half of the relief goes to small businesses. We are confident that thousands of small firm facilities will benefit from this reform.

9. Some cite GAO's work and insist that Form R reporting under TRI is not that expensive. Does this TRI reform help small businesses? Even EPA admits that this TRI relief provides only \$6 million/year in cost savings?

Small businesses have consistently voiced their concerns to Advocacy that the TRI program imposes substantial paperwork burdens with little corresponding environmental benefit, especially for thousands of businesses that have zero discharges or emissions to the environment. These businesses must devote scarce time and resources to completing lengthy, complex Form R reports each year, despite the fact that they have zero discharges.

Small businesses continue to identify TRI paperwork relief as a priority. Paperwork reduction is essential because as Advocacy research has shown, small businesses are disproportionately affected by federal regulations. For the smallest firms, the annual regulatory burden in 2004 was \$7,647 per employee – nearly 45 percent more than the \$5,282 burden for their largest counterparts. For environmental rules, the difference is more dramatic with small firms spending 4½ times more per employee for environmental compliance than large businesses do.

The 2005 Advocacy-funded study by W. Mark Crain, *The Impact of Regulatory Costs on Small Firms*, found that small businesses are disproportionately affected by the total Federal regulatory burden.²⁰ This overall regulatory burden was estimated by Crain to exceed \$1.1 trillion in 2004.²¹ For firms employing fewer than 20 employees, the annual regulatory burden was estimated to be \$7,647 per employee – nearly 45 percent greater than the \$5,282 burden estimated for firms with 500 or more employees.²² Looking specifically at compliance with federal environmental rules, the difference between small and large firms is even more dramatic. Small firms generally have to spend 4½ times more per employee for environmental compliance than large businesses do.²³ Environmental requirements, including TRI paperwork requirements, can constitute up to 72% of small manufacturers' total regulatory costs.²⁴

Through expanded Form A eligibility, EPA's burden reduction rule provides a major incentive for firms to bolster their reputations as environmentally responsible companies. In addition to assisting small businesses via reduced recordkeeping/reporting requirements, EPA's TRI reporting burden reduction rule also provides TRI reporters with incentives to protect the environment. In order to qualify for the benefits associated with the short Form A, many facilities will need to reduce their emissions into the environment and perform more pollution prevention.

By limiting persistent, bioaccumulative and toxic chemicals (PBT) Form A eligibility to facilities with zero releases and 500 pounds or less (Annual Reportable Amount, or ARA)²⁵ of other waste management (i.e., recycling, energy recovery, and treatment for destruction), EPA is encouraging facilities to eliminate releases of PBT chemicals and reduce other waste management quantities to 500 pounds or less. Facilities that currently dispose of wastes, such as mercury, would be encouraged to recycle the mercury instead to achieve zero emissions into the environment. This new provision is especially important to the environment because it drives those releases of chemicals of "special

²⁰ W. Mark Crain, *The Impact of Regulatory Costs on Small Firms* (September 2005) available at <http://www.sba.gov/advo/research/rs264tot.pdf>.

²¹ *Id.* at p. v.

²² *Id.* at page 55, Table 18.

²³ *Id.*

²⁴ *Id.*

²⁵ The annual reportable amount (ARA) is defined in the final rule as the sum of the quantities reported in sections 8.1 to 8.8 of the Form R, which reflect chemical disposal or other releases (8.1), energy recovery (8.2 and 8.3), recycling activity (8.4 and 8.5), treatment (8.6 and 8.7), and quantities associated with one-time events (8.8). In the pre-2006 version of the ARA, the ARA was defined as the sum of sections 8.1-8.7. The addition of 8.8 represented wastes generated from one-time events.

concern” (PBTs) to zero.

For non-PBTs, EPA has designed the Form A eligibility criteria in such a way as to create an incentive for facilities to move away from disposal and other releases toward treatment and recycling. This incentive is created by raising the recycling, treatment, and energy recovery portions of the ARA to a 5,000-pound maximum, while capping releases at 2,000 pounds. This approach promotes pollution prevention, recycling, energy recovery, and treatment over releases. In addition, by including all waste management activities in the Form A eligibility criteria, EPA will be newly encouraging facilities above the 5,00-pound ARA to reduce their total waste management in order to qualify for Form A eligibility.

Therefore, the Federal government is properly concerned with environmental regulatory costs on small firms, and particularly those that fall on the manufacturing sector. Small businesses need regulatory relief and this TRI rule is a small but significant step in that direction.

10. Some of my colleagues like to cite to numbers showing public criticism of the EPA rule and your own views. How do you explain the disconnect between this and your own views?

Our contractor, E. H. Pechan & Associates, identified various reasons for the large disconnect between public dissatisfaction with the TRI reform proposals, and the lack of significant impact on right-to-know found in the study. Two common explanations were: (1) ignorance about the specifics of the reporting revisions; and (2) ignorance about how TRI data are actually used. With respect to the first conclusion, many commenters appeared to be unaware that Form A does not represent a complete loss of Form R quantitative chemical information. (A more apt characterization is that Form A creates an incentive for facilities to reduce their chemical use/releases by allowing small quantity handling facilities to use range reporting.) Concerning the second reason, commenters often appeared to be unaware that data users understandably focus on large quantity emitters and PBT emitters that are not Form A eligible under EPA’s December 2006 rule.